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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

HAROLD EDWARD DOMINGUE,

Defendant and Appellant.

H034328

(Santa Clara County
Super. Ct. No. CC891186)

Defendant Harold Edward Domingue pleaded no contest to attempted pimping. At sentencing, the trial court imposed a \$30 criminal conviction assessment pursuant to Government Code section 70373, subdivision (a) (hereafter section 70373(a)). On appeal, defendant argues that the assessment was improperly imposed because the offense to which it relates was committed in 2008, and the law requiring that the assessment be imposed became effective in 2009. He concludes that the law is an ex post facto law as applied to him. We disagree and affirm the judgment.

DISCUSSION

The question of law presented by this appeal is identical to the one discussed in *People v. Brooks* (2009) 175 Cal.App.4th Supp. 1.

“Section 70373(a)(1) became effective on January 1, 2009, with the enactment of Senate Bill No. 1407 (2007-2008 Reg. Sess.). It provides: ‘(a)(1) To ensure and maintain adequate funding for court facilities, an assessment shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses as

defined in subdivision (i) of Section 1463 of the Penal Code, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. The assessment shall be imposed in the amount of thirty dollars (\$30) for each misdemeanor or felony and in the amount of thirty-five dollars (\$35) for each infraction.’ (§ 70373(a)(1).)

“Enacted as part of Senate Bill No. 1407 (2007-2008 Reg. Sess.), the criminal conviction assessment is but one component of a broader legislative scheme in which filing fees in civil, family, and probate cases, were also raised. (See, e.g., Gov. Code, §§ 70611 [unlimited civil filing fees], 70613, subd. (a) [limited civil filing fees], 70621 [fees for an appeal or petition for a writ in limited civil cases], 70654 [petitions for appointment of a guardian].)

“Appellant relies on *People v. High* (2004) 119 Cal.App.4th 1192, to support his assertion that the assessment, as applied here, is an ex post facto law. ‘A prohibited ex post facto law is a retrospective statute that increases a punishment beyond that applicable at the time the crime was committed.’ (*Id.* at p. 1195.)

“In *High*, the Third District Court of Appeal held that fees and penalties that are punitive in nature may not be imposed with respect to offenses that occurred before the fees and penalties were adopted. (*People v. High, supra*, 119 Cal.App.4th at p. 1198.) Specifically, the Court of Appeal held that a surcharge on fines for theft-related offenses imposed under Penal Code section 1465.7 and a court facilities construction penalty imposed under Government Code section 70372, because calculated on size and severity of base fine, were penal in nature. These sections became effective after the defendant in *High* had committed his crimes.

“Government Code section 70372, subdivision (a)(1), the court facilities construction penalty statute, provides: ‘(a)(1) Except as otherwise provided in subdivision (b) of Section 70375 and in this article, there shall be levied a state court construction penalty, *in the amount of five dollars (\$5) for every ten dollars (\$10), or part*

of ten dollars (\$10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including, but not limited to, all offenses involving a violation of a section of the Fish and Game Code, the Health and Safety Code, or the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. This penalty is in addition to any other state or local penalty, including, but not limited to, the penalty provided by Section 1464 of the Penal Code and Section 76000' (italics added).

“Penal Code section 1465.7, subdivision (a), the state surcharge statute, provides: ‘(a) A state surcharge of 20 percent shall be levied on the base fine used to calculate the state penalty assessment as specified in subdivision (a) of Section 1464’ (italics added).

“The Attorney General in *People v. High, supra*, 119 Cal.App.4th 1192, conceded that the state surcharge was an ex post facto law. *High* recognized that section 70372 was a ‘method of increasing the funds available to remodel, renovate and construct new state court facilities,’ but noted that ‘the structure, operative principle, and descriptive language chosen reflect a penal purpose as well.’ (*People v. High, supra*, at p. 1198.) Because the penalty imposed tracked the seriousness of the offense (\$5 for every \$10 or part of \$10) and the base penalty, the court held that ‘[t]he prospect of its imposition therefore has a similar deterrent effect to that of punitive statutes generally.’ (*Ibid.*) The court also noted that the charge was termed a ‘penalty’ and not a ‘fee.’ (*Ibid.*)” (*People v. Brooks, supra*, 175 Cal.App.4th at pp. Supp. 3-5.)

The court in *Brooks* observed that the language in Government Code section 70373 closely resembles that of the court security fee required in Penal Code section 1465.8, which the Supreme Court has held does not violate ex post facto prohibitions because it serves a nonpunitive purpose. (*People v. Alford* (2007) 42 Cal.4th 749.) It concluded that the assessment at issue was more like the fee approved in *Alford* than the penalty invalidated in *High* because (1) the purpose of the assessment is to ensure and maintain adequate funding for court facilities, (2) the statute is part of a broad legislative scheme in which civil fees were also raised to fund courthouse construction, (3) the

assessment is termed an “assessment,” not a fine or penalty, (4) the \$30 is relatively small, and (5) the amount is not dependent on the seriousness of the offense.

Like the defendant in *Brooks*, defendant relies on *High*. And he urges that *Brooks* was wrongly decided. We agree with the conclusion reached in *Brooks* for the reasons stated therein.

DISPOSITION

The judgment is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.